

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, Washington 98512
Fax (360) 753-6862

Richard A. Finnigan
(360) 956-7001
rickfinn@localaccess.com

Kathy McCrary, Paralegal
(360) 753-7012
kathym@localaccess.com

August 5, 2008

VIA E-MAIL AND HAND DELIVERY

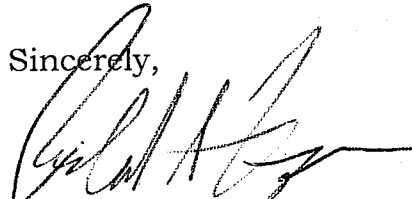
Mr. David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket No. UT-053041 – Response to ICS Motion to Compel WITA
and Inland to Respond to Data Requests

Dear Mr. Danner:

Enclosed are the original and two copies of the Response to ICS Motion
to Compel WITA and Inland to Respond to Data Requests together with the
Certificate of Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Service List (via e-mail and/or U.S. mail)
ALJ Ann Rendahl (via e-mail and hand delivery)
ALJ Marguerite Russell (via e-mail and hand delivery)
Clients (via e-mail)

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COMMUNICATIONS DIVISION

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of
Intelligent Community Services, Inc.
For Designation as Eligible
Telecommunications Carrier Under
47 U.S.C. §214(e)(2)

DOCKET NO. UT-053041

RESPONSE TO ICS MOTION TO COMPEL
WITA AND INLAND TO RESPOND TO DATA
REQUESTS

The Washington Independent Telecommunications Association (“WITA”) and Inland Telephone Company (“Inland”) hereby respond to the motion filed by Intelligent Community Services, Inc. (“ICS”) to compel WITA and Inland to respond to certain data requests.

INTRODUCTORY COMMENTS

It is interesting to see how ICS characterizes this case. ICS states the premise for its data requests and the motion to compel as follows:

WITA and Inland have taken the position that ICS’s petition for designation as an eligible telecommunications carrier (“ETC”) is not in the public interest because ICS currently is the only land line telecommunications carrier that the owner of Suncadia Resort has authorized to provide services to residents in the resort area.

Motion to Compel at ¶2. This is a very incomplete statement of the position advanced by WITA and Inland. Because it is incomplete, it is a misleading characterization of WITA and Inland’s

1 position. For example, Inland has always sought direct access to the customers in Suncadia using
2 its own facilities. See, generally, Exhibit No. ____ (JPC-2) to Mr. Coonan’s pre-filed Direct
3 Testimony. However, Suncadia has prevented any carrier from building facilities within the
4 Suncadia Resort. Further, Inland and WITA oppose the ICS Petition not just on public interest
5 grounds, but on the grounds that it fails to meet the Commission’s rules as well. In addition, there
6 are multiple public interest reasons why WITA and Inland oppose the Petition filed by ICS.

7 From this misleading characterization, ICS then states that whether WITA members,
8 including Inland, are the only land line carriers that provide basic telecommunications service to
9 multiple tenant environments (“MTEs”) in their service territories is directly related to the issue of
10 whether it is in the public interest to designate ICS as an eligible telecommunications carrier
11 (“ETC”) to receive universal fund support. ICS goes on to state “The requested information is also
12 relevant to the issue of whether it would be discriminatory to deny ETC status to ICS because it is
13 the only land line carrier that Suncadia is permitted to have physical access to Suncadia’s fiber
14 network when WITA members receive universal service funds for being the sole land line service
15 providers to MTEs in their service territories.” ICS Motion to Compel at ¶2.

16 It is difficult to discern whether ICS is stating one issue or two. Assuming that there are two
17 issues, the first one apparently is a syllogism that ICS is attempting to create that runs as follows:

- 18 A. WITA members are the only land line carriers that serve some multiple tenant
- 19 environments in their service territory.
- 20 B. ICS is the only land line carrier serving the MTE known as Suncadia.
- 21 C. WITA members receive universal service fund support.
- 22 D. Therefore, ICS should receive universal service fund support.

23 This is a logical non-sequitur. There is no logical reason why Point A leads to Point D. The issue is
24 a red herring.

25 The second issue is stated as one of discrimination against ICS. It is important to note that
26 the discrimination issue is not on the Issues List. Further, ICS did not address either of these issues,

1 assuming two issues, in its opening testimony. If these matters are raised for the first time in ICS's
2 reply testimony, WITA and Inland must have the opportunity to respond to that testimony. It is
3 apparent that ICS has been waiting in the weeds to file new theories at a time when no party has the
4 chance to respond to that testimony and to the theories raised. If that conduct occurs, and there can
5 be no reason that ICS seeks the discovery than its intention to engage in such conduct, that action
6 should not be allowed to stand without the other parties having the opportunity to respond with
7 further testimony. With that point made, WITA and Inland will turn to the specific data requests
8 brought forth by ICS.

9 Data Request 2

10 Data Request 2 reads as follows:

11 2. Does any WITA member provide telecommunications service to customers in a
12 multi-tenant environment, including, but not limited to a resort area, private
13 subdivision or community, condominium or condominium complex, apartment
14 building or complex, office building or complex, office park, school dormitory, or
shopping center? If so, please provide the following information for each such
multi-tenant environment:

- 15 a. The name of the WITA member;
- 16 b. The identity of the multi-tenant environment;
- 17 c. A copy of any written agreement with the person or entity that owns the
18 multi-tenant environment or the common areas in that environment;
- 19 d. The identity of any other carrier that provides telecommunications services to
20 customers within that multi-tenant environment other than commercial
mobile radio service providers; and
- 21 e. Whether the WITA member receives universal service funding for its
22 provision of telecommunications service to customers within that multi-
tenant environment.

23 ICS states that WITA and Inland objected to this request as burdensome, among other
24 reasons. ICS then states "WITA and Inland, moreover, have provided no explanation of why the
25

1 requested information would be burdensome for each WITA member to produce.” ICS Motion to
2 Compel at ¶5. ICS fails to disclose to the Commission that when counsel conferred, counsel for
3 WITA and Inland described why this request would be burdensome. See, Mr. Finnigan’s
4 Declaration attached hereto as Exhibit 1. It is misleading, to say the very least, to state that WITA
5 and Inland provided no explanation of why the requested information is burdensome.

6 Before proceeding further on the issue of why the data request is burdensome, there is a
7 threshold issue that must be addressed. The data request is directed to WITA members. Other than
8 Inland, WITA members are not parties to this proceeding. There is a very important and very
9 difficult question to address concerning whether and to what extent members of an association that
10 has appeared in a docket can be compelled to respond to data requests as non-parties.

11 By analogy, if TRACER had intervened in this docket, ICS may well have propounded data
12 requests requiring TRACER members to disclose whether or not they are in MTEs and produce
13 their leases and other financial information concerning their arrangements. Would Boeing, Safeco
14 and other TRACER members be compelled to respond? WITA asserts that individual members of
15 an association who are not themselves parties to a docket cannot be compelled to respond to data
16 requests. WITA has found no authority, and ICS offers none, that association members who are not
17 parties are required to respond to data requests.

18 However, this issue does not have to be reached since this data request is indeed
19 burdensome. As explained to counsel for ICS when counsel conferred, the information that is
20 requested is not maintained by WITA members in any readily assessable format. There is no
21 customer class called MTE and assessable records are not kept by an MTE status. This data request
22 would force WITA members to try to make guesses as to whether a particular location, if it can
23 even be done by comparing billing records, serves more than one customer. Or, in the alternative,
24 the WITA members would have to go out and survey each of their entire service areas to determine
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1 whether there are MTEs. For CenturyTel, for example, this would be an impossible task.
2 Obviously, the smaller the company, the more readily that physical survey can occur.¹ However,
3 this still requires a special study and, hence, by definition is burdensome. It would require time
4 away from serving the public to perform this special study.

5 It should also be noted that the FCC has long precluded exclusive arrangements in the MTE
6 environment for business services.² Further, the FCC has recently extended that prohibition of
7 exclusive arrangements in multi-tenant environments to residential MTEs.³ Thus, any arrangement
8 that would be said to exist that is in contractual form is not enforceable. When this was explained
9 to counsel for ICS, he replied that ICS sought information about the locations where physically only
10 one carrier could serve, whether there was an agreement or not. See, Mr. Finnigan's Declaration.
11 That step would require a location-by-location physical inspection -- an extremely burdensome
12 undertaking.

13 Given that any exclusive agreement between WITA members and the owner of an MTE is
14 not legally enforceable, there is no meaningful data that can be produced. The legal status of MTE
15 agreements, apparently to ICS, differs from the contractual arrangement between ICS and Suncadia
16 LLC. At least ICS and Suncadia LLC are behaving as if their agreement is still enforceable. On the
17 other hand, any exclusive arrangements with a WITA member and the owner of an MTE (if one
18 exists – which is doubtful) is unenforceable. It is meaningless. Given the difference in
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21 ¹ On a relative size basis, the data request is still burdensome for small companies. The smaller the company, the
22 smaller the staff.

23 ² In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets; Implementation of the
Local Competition Provisions of the Telecommunications Act of 1996, WT Docket No. 99-217; CC Docket No. 96-98,
24 First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217 and Fifth Report and
Order and Memorandum Opinion and Order in CC Docket No. 96-98, FCC 00-366 (released Oct. 25, 2000).

25 ³ In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217,
Report and Order, FCC 08-87 (released March 21, 2008).

1 environments, it is not feasible that any information provided by a WITA member could lead to
2 evidence that would be admissible or useful at hearing.

3 Further, WITA notes that subsection c of the data request requires a copy of any written
4 agreement that a WITA member might have with the person or entity that owns the MTE or the
5 common areas of the MTE. WITA has informed ICS in the context of at least one of the data
6 requests propounded by ICS that any written agreement between a WITA member and a customer
7 related to service is required by law to be filed with the Commission. See, RCW 80.36.150. Thus,
8 the information sought by ICS is as readily available to ICS as it is to any other entity, including
9 WITA members. This was a further basis stated in objection to the data request by incorporation of
10 the General Objections. ICS fails to discuss this point in its motion.

11 WITA also notes that Data Request 2.d. would require WITA members to identify any other
12 carrier providing telecommunications service to customers within the MTE other than CMRS
13 providers. In this context, the data request is ambiguous and may be impossible to respond to. It is
14 ambiguous because there is no definition of the term "carrier." Are Vonage, Skype and other
15 providers of IP-based telephony within the definition of "carrier"? WITA and its members have
16 absolutely no way of ascertaining whether an entity in an MTE is using service from Vonage, Skype
17 or a host of other such arrangements.

18 For all of the reasons set forth above, the data request is inappropriate and a response should
19 not be required.

20 Data Request 3

- 21 3. Other than in the Suncadia resort area in the Roslyn exchange, is any carrier other
22 than a WITA member the exclusive or primary provider of telecommunications
23 service to customers in a multi-tenant environment located in any area served by a
24 WITA member, including but not limited to a resort area, private subdivision or
25 community, condominium or condominium complex, apartment building or
26 complex, office building or complex, office park, school dormitory, or shopping

1 center? If so, please provide the following information for each such multi-tenant
2 environment:

- 3 a. The name of the WITA member in whose service territory the multi-tenant
4 environment is located;
- 5 b. The identity of the multi-tenant environment;
- 6 c. The identify of the carrier other than the WITA member that is the exclusive
7 or primary provider of telecommunications service to customers in that multi-
8 tenant environment; and
- 9 d. A description of how the WITA member in whose service territory the multi-
10 tenant environment is located obtains access to customers in that environment
11 in order to provide telecommunications service, or an explanation of why the
12 WITA member does not have such access.

13 ICS describes this data request as the mirror image of Data Request 2. It is seeking
14 information about MTEs served “primarily” by carriers other than a WITA member. Again, ICS
15 alleges “nor has WITA made any effort to demonstrate that identifying and providing information
16 about such circumstances, to the extent they exist, would be burdensome.” ICS Motion to Compel
17 at ¶6. Again, that is not correct. This data request was not discussed directly when counsel
18 conferred. However, for the reasons that were provided concerning Data Request 2 when the
19 parties conferred, it is obvious that this request would require a special study. WITA members do
20 not track service by an MTE designation. Nor, do WITA members track areas that they do not
21 serve. Thus, if, for example, a landlord had switched service to Comcast, knowledge of that fact
22 would probably depend up on the institutional memory of the individuals that work for the WITA
23 member company, as opposed to being able to access the information from any data base.
24 Requiring that sort of special study is inappropriate.

1 Again, WITA's position is that WITA members cannot be compelled to respond to data
2 requests for the same reasons set out in response to Data Request 2. However, again, that issue does
3 not need to be reached here.

4 Further, as pointed out above, the FCC has prohibited exclusive arrangements of the nature
5 that ICS seeks to find. Therefore, there would not be any useful information that would be provided
6 in response to this data request since the relationship between ICS and Suncadia, at least as ICS
7 apparently views it, is not the same as the typical MTE environment. However, it is interesting to
8 consider whether the ICS/Suncadia arrangement, in fact, violates the terms of the FCC's orders.

9
10 Further, this data request is vague and ambiguous because there is no definition of what
11 constitutes the "primary provider of telecommunications service." Does this mean more than fifty
12 percent? Does it mean less than all? The lack of clarity only complicates the work that would have
13 to be undertaken in any effort to respond to such data request.

14 WITA asserts that the data request is inappropriate and a response should not be compelled.

15
16 Data Request 5

17 Has WITA ever not opposed any carrier's petition for designation as a competitive eligible
18 telecommunications carrier in Washington? If so, please identify the carrier, the docket
19 number of the proceeding, and an explanation of WITA's position on that petition.

20 This is indeed a novel data request. ICS asserts that if WITA has, in fact, opposed all
21 petitions for designation of competitive ETC status, WITA's position in this docket somehow lacks
22 credibility.⁴ This is a very strange take on the right of a party to participate in Commission
23 proceedings. What ICS is suggesting is that if a party has appeared in a prior proceeding and taken

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25 ⁴ ICS Motion to Compel at ¶7.

1 position "XYZ," if it wants to take that same position in a subsequent docket, somehow that
2 participation in the subsequent docket is less credible or is somehow tainted. To even begin to tread
3 down that path would be a terrible step towards inhibiting First Amendment rights and due process
4 rights under the Fourteenth Amendment.

5 Not that the theory advanced by ICS has any substance, but if it did, it is worth noting that
6 Staff agrees with WITA that ICS's petition is not in the public interest. Are WITA and Staff not
7 credible because they agree with one another?

8 Beyond that, this data request is clearly burdensome. What this data request would require
9 WITA to do is to search its archives back to 1996 and then compare those archives with all
10 Commission filings from 1996 forward to determine whether or not those dockets in which WITA
11 has appeared constitute all of the dockets involved.

12 Further, since these are public Commission dockets, any filing by WITA would be filed with
13 the Commission. Thus, the records are as readily available to ICS as they are to WITA.

14 Particularly in light of the stated reason for ICS propounding the data request, that it
15 somehow wants to inhibit WITA's ability to participate in Commission proceedings, this data
16 request is inappropriate and a response should not be compelled.

17 Data Request 9

18 Does Inland Telephone Company own utility poles or conduit in the Roslyn exchange? If
19 so, does or will Inland permit other carriers to attach facilities to those poles or in those
20 conduits? If so, please provide a copy of the rates, terms and conditions under which Inland
offers or is willing to provide such attachments.

21 ICS offers the following rationale for this data request: "ICS has requested information
22 about whether Inland owns telecommunication infrastructure that ICS needs to access in order to
23 construct network facilities in the remainder of the Roslyn exchange, and if so, extent to which
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1 Inland will provide access to that infrastructure.” ICS Motion to Compel at ¶8. This statement is
2 hypocritical in the extreme.

3 First, ICS objected to certain data requests propounded by Inland on the theory that Inland
4 was trying to use the docket inappropriately to negotiate terms and conditions of interconnection.⁵
5 However, ICS admits that it is doing the exact thing that it objected to. The hypocrisy of ICS’s
6 statement is further underscored by the fact that ICS has never requested access to Inland’s poles
7 and conduits. In the negotiations that are now underway, the only items that ICS has requested, as a
8 practical matter are resale, dialing parity and number portability. The letter from ICS requesting
9 negotiations and Inland’s response are attached to Mr. Finnigan’s Declaration. In the May 5, 2008,
10 letter from ICS to Inland, ICS requested the following: “Section 251(a) interconnection; Section
11 251(b)(1) resale; Section 251(b)(2) number portability; Section 251(b)(3) dialing parity, including
12 directory listings; Section 251(b)(5) reciprocal compensation; and 911/E911 connectivity.” ICS
13 expressly excludes Section 251(b)(4), which is access to poles, ducts, conduits, and rights-of-way.
14 ICS has blatantly mischaracterized what has occurred.

15 At best, ICS’s argument is disingenuous. A more correct characterization of ICS’s argument
16 is that it is a fabrication for ICS to assert or imply that ICS has requested access to Inland’s poles
17 and conduits. The stated basis for the data request has no tie to reality, but is simply a tactical ploy
18 for purposes of this docket.

19 As Inland pointed out in its response to the data request, Inland Telephone Company has not
20 received a request from any telecommunications carrier for access to attach facilities to poles or to
21 place facilities in conduit. In absence of such a request, Inland does not have rates, terms and
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25 ⁵ That was not a correct characterization of Inland’s actions.

1 conditions for access. Thus, it would be pure speculation and require a special study for Inland to
2 develop such rates, terms and conditions to respond to the hypothetical raised by ICS.

3 Data Request 11

4 Is Inland Telephone Company willing to provide other carriers with access, on any basis
5 other than purchase or resale of tariffed telecommunications services, to any fiber optic or
6 other telecommunications network facilities that Inland has deployed in the Roslyn
exchange? If not, please explain why not. If so, please provide the rates, terms and
conditions under which Inland is willing to provide such access.

7 As with Data Request 9, because Inland has not received a request for access to its fiber, this
8 question calls for Inland to speculate. It is also a hypothetical not supported by evidence in the
9 record or that could possibly be produced to be placed into the record. What Inland will be willing
10 to do at some point in the future is entirely dependent upon the rules that apply at that point in time,
11 the nature of the carrier making the request, the extent of the request and what it entails, and a
12 myriad of other factors that are not before the Commission at this time.

13 ICS again continues to mischaracterize the record. ICS states "As a factual matter, Inland
14 has invoked its exemption as a rural local exchange carrier in discussions with ICS and stated that it
15 will not negotiate terms and conditions for requirements other than those in Section 251(a) and (b)
16 of the Telecommunications Act of 1996, which do not include unbundled access to Inland's
17 network." ICS Motion to Compel at ¶10. That is not factually correct. What Inland did in its
18 response to ICS's request for interconnection is note that Inland does, indeed, qualify as a rural
19 telephone company for purposes of the exemption from 251(c) obligations, but further noted that
20 ICS had not requested anything other than Section 251(a) or 251(b) matters, and therefore the rural
21 exemption was not an issue.⁶ That is a far cry from "invoking" the exemption. This is precisely
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23
24 ⁶ Inland did reserve the possibility that the rural exemption could be raised if ICS sought arbitration. This reservation of
25 legal rights is far different from stating it will not negotiate.

1 what Inland stated: “Since your letter clearly requests only items under Section 251(a) and Section
2 251(b), Inland’s rural exemption should not be at issue, unless and until ICS asserts that it may seek
3 arbitration under Section 252 of the Act.”⁷ Clarifying that the exemption does not apply to the
4 discussions is much different than “invoking” that exemption in the discussions with ICS. The
5 extent to which ICS misstates facts is very disappointing.

6 As with access to conduit and poles, ICS has never requested access to Inland’s fiber. As
7 stated in Mr. Finnigan’s Declaration, that item has never been mentioned in any discussions that the
8 parties have had.

9 ICS states that Inland cannot object to the data request as speculative “when Inland refuses
10 to negotiate such access.” ICS Motion to Compel at ¶10. That is, as explained above, factually
11 inaccurate. Since no carrier has asked to negotiate such access, Inland can not be said to have
12 refused to negotiate.

13 What is important to keep in mind is that Inland sought access to the Suncadia customers
14 directly. Suncadia came up with the means to prevent that access. In the reverse situation, Inland
15 has no control over the rights-of-way in the Roslyn exchange. ICS is free to use those rights-of-
16 way, assuming they enter into a straightforward and commonplace franchise agreement with the
17 City of Roslyn. The situations are not anywhere close to being analogous. Further, we now know
18 through Suncadia’s compelled response to WITA’s data requests, that Suncadia will never allow
19 Inland or any other carrier equivalent access to its fiber that ICS enjoys. The only access is the
20 much inferior form of resale. See, the response to Data Request 1, WITA First Set of Data
21 Requests, attached as Exhibit 2. With Suncadia having made its position clear, the terms and
22 conditions under which Inland will or will not allow access to its fiber under a hypothetical situation
23

24 ⁷ May 6, 2008, letter from Inland to ICS attached to Mr. Finnigan’s Declaration.
25

1 of some unknown, future, undefined request are simply not at issue in this proceeding.

2 Further, as noted above, any response would require Inland to perform a special study to
3 develop terms and conditions it does not now possess.

4 Data Request 12

5 Does any WITA member other than Inland Telephone Company offer or provide other
6 carriers with access, on any basis other than purchase or resale of finished
7 telecommunications services, to any fiber optic or other telecommunications network
8 facilities that the WITA member has deployed in its service territory? If not, please explain
9 why not. If so, please provide the rates, terms and conditions under which the WITA
10 member offers or provides such access.

11 For all the reasons stated in response to Data Request 11, the response to this data request
12 should not be compelled.

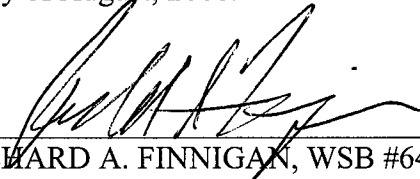
13 Further, WITA reasserts the arguments it made in response to Data Request 2 concerning
14 whether WITA's members can even be compelled to respond to such a request as non-parties.
15 Again, however, that issue need not be reached.

16 As WITA pointed out in its response to the data request to ICS, if there are any agreements
17 that are entered into between WITA members and other competitive local exchange carriers (and
18 there are), those agreements are on file with the Commission and are equally, perhaps more readily,
19 available to ICS from the Commission than requiring WITA to canvas each of its members and try
20 to derive the information that may be responsive to the data request. The information is equally
21 available to ICS. Quite frankly, ICS's statement that WITA members are in a far better position
22 than ICS to know whether or under what terms they offer or provide competitors with access to
23 their networks is just not true. For companies as large as Embarq and CenturyTel that have many
24 such agreements, it is highly unlikely that they have each such agreement memorized, if you will.
25 They would have to access the agreements in precisely the same way that ICS can access them
26 through the Commission.

1 The Commission's own records will show many interconnection agreements exist. The
2 extent to which they involve access to fiber optic or other telecommunications network facilities
3 would have to be determined by reviewing every one of those agreements. This would be a
4 monumental task and one ICS can perform for its own benefit.

5 Finally, WITA again finds it highly offensive that ICS would make a statement that "given
6 that as far as ICS knows, all WITA members take the same position as Inland and refuse to
7 negotiate such access." ICS Motion to Compel at ¶11. ICS has no basis in fact for this statement.
8 ICS is making statements that it has no basis to make and are not founded on any factual showing.
9 ICS should not be rewarded for mischaracterizing the real situation and making false statements.

10 Respectfully submitted this 5th day of August, 2008.

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13 RICHARD A. FINNIGAN, WSB #6443
14 Attorney for the Washington Independent
15 Telecommunications Association

EXHIBIT 1

1
2
3
4
5
6 **BEFORE THE WASHINGTON STATE**
7 **UTILITIES AND TRANSPORTATION COMMISSION**
8

9 In the Matter of the Petition of
10 Intelligent Community Services, Inc.
11 For Designation as Eligible
12 Telecommunications Carrier Under
13 47 U.S.C. §214(e)(2)

DOCKET NO. UT-053041

DECLARATION OF RICHARD A. FINNIGAN

14
15 I, Richard A. Finnigan, hereby declare under penalty of perjury under the laws of the State
16 of Washington that the following statements are true and correct:

17 1. I am the attorney for the Washington Independent Telecommunications Association
18 (WITA) and Inland Telephone Company (Inland) in this docket and make this Declaration in that
19 capacity.

20 2. When I discussed the responses to the Intelligent Community Services, Inc. (ICS)
21 data requests with Mr. Kopta, I informed him that to my knowledge, WITA member companies did
22 not keep their records in a way that would make it easily assessable to determine which locations
23 were multi-tenant environments or MTEs. I further informed Mr. Kopta that it was illegal under
24 FCC rules for any WITA member to have an arrangement where they were the exclusive provider
25

26 DECLARATION OF
RICHARD A. FINNIGAN - 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001


1 to an MTE. He stated that he wanted to know whether there were locations that because of the
2 nature of the entrance facilities, it was physically possible for only a single carrier to serve that
3 MTE. I told him that, in essence, what he is asking is for the companies to do actual surveys of
4 their service areas in order to determine which locations were MTEs and which were not, and to
5 determine the type of entrance facility and that would be very expensive and time consuming. I
6 made this explanation in the express context of explaining why Data Request No. 2 was
7 burdensome.

8 3. Attached to this Declaration as Attachment 1 is the May 5, 2008, letter from Mr. Jeff
9 Tilleman as Vice-President/General Manager of Intelligent Community Services, Inc. to Greg
10 Maras, Secretary of Inland Telephone Company.

11 4. Attached hereto as Attachment 2 is a true and correct copy of Inland's May 6, 2008,
12 letter from Gregory Maras as Secretary of Inland Telephone Company to Jeff Tilleman as Vice-
13 President and General Manager of Intelligent Community Services, Inc. responding to the letter of
14 May 5, 2008.

15 5. During the course of negotiations between Inland and ICS, I have been the primary
16 point of contact for Inland. ICS has never expressed a desire to access Inland's poles and conduits
17 or Inland's fiber in any of the discussions about the interconnection agreement between Inland and
18 ICS or in any other context of which I am aware.

19 Dated this 5th day of August, 2008.

20
21 
22 _____
23 RICHARD A. FINNIGAN

24
25
26 DECLARATION OF
RICHARD A. FINNIGAN - 2

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

ATTACHMENT 1



May 5, 2008

Greg Maras
Secretary
Inland Telephone Company
103 South Second Street
P.O. Box 171
Roslyn, WA 98941

Dear Mr. Maras:

This letter serves as a request to negotiate an interconnection agreement for the State of Washington pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("Act") between Intelligent Community Services, Inc. ("ICS"), a local exchange carrier, and Inland Telephone Company ("Inland"), an incumbent local exchange carrier. ICS requests an interconnection agreement that encompasses the following carrier obligations in the Act and applicable rules and orders of the Federal Communications Commission and Washington Utilities and Transportation Commission: Section 251(a) interconnection; Section 251(b)(1) resale; Section 251(b)(2) number portability; Section 251(b)(3) dialing parity, including directory listings; Section 251(b)(5) reciprocal compensation; and 911/E911 connectivity. Enclosed is a draft interconnection agreement with the terms and conditions that ICS proposes as the starting point for the parties' negotiations.

If Inland considers itself to be a rural telephone company and exempt from the duty to negotiate the terms of an interconnection agreement pursuant to Sections 251(c)(1) and 252 of the Act, you should consider this to be a bona fide request for the interconnection and services specified in this letter pursuant to Section 251(f)(1)(A).

Please acknowledge receipt of this letter at your earliest convenience and inform me whether Inland will negotiate pursuant to the timelines and other requirements of Sections 251(c)(1) and 252 of the Act and, if so, Inland's point of contact for negotiations.

Very truly yours,

Jeff Tilleman
Vice President/General Manager

cc: Richard Finnigan
Gregory J. Kopta

ATTACHMENT 2

INLAND TELEPHONE COMPA
Corporate Offices

103 S. 2nd St.
P.O. Box 171
Roslyn, WA 98941

**INLAND
TELEPHONE**

Telephone: (509) 649-2211
Fax: (509) 649-3300

May 6, 2008

Via Federal Express overnight delivery

Jeff Tilleman
Vice President/General Manager
Intelligent Community Services, Inc.
9400 SW Beaverton-Hillsdale Hwy
Suite 205
Beaverton, OR 97005

Re: ICS Letter of May 5, 2008

Dear Mr. Tilleman:

Your letter of May 5, 2008, was received by me via email on May 5, 2008, and via UPS delivery service on May 6, 2008. Your letter requested an interconnection agreement that encompasses certain items that you delineated in your letter of May 5, 2008. Your letter also asked that Inland inform you whether Inland will negotiate to the timelines and other requirements of Sections 251(c)(1) and 252 of the Telecommunications Act of 1996 (technically the Communications Act of 1934, as amended by the Telecommunications Act of 1996, together the ("Act")). First, Section 251(c)(1) does not contain any timelines. Second, the only timeline that I am aware of under Section 252 of the Act is a provision for an arbitration window. Inland's position is that your request does not trigger the arbitration provisions of Section 252.

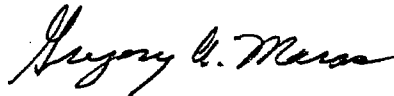
Your letter of May 5, 2008, also makes the statement that if Inland considers itself to be a rural telephone company and exempt from the duty to negotiate the terms of an interconnection agreement pursuant to Sections 251(c)(1) and 252 of the Act, your letter should be considered a bona fide request for interconnection and services pursuant to Section 251(f)(1)(A). Inland is a rural telephone company as defined by the Act. Inland Telephone Company is also exempt from the duty to negotiate under Section 251(c)(1) of the Act. Having said that, however, and without waiving Inland's right to assert its rural exemption, I will point out that the exemption is for the obligations that occur under 251(c) of the Act, not 251(b) of the Act. Since your letter clearly requests only items under Section 251(a) and Section 251(b), Inland's rural exemption should not be at issue, unless and until ICS asserts that it may seek arbitration under Section 252 of the Act.

Without waiving its right to assert its rural exemption, Inland is willing to enter into voluntary discussions with ICS concerning the items requested in your letter, except one. You have requested "911/E911 connectivity" and have essentially asserted that 911/E911 connectivity is a carrier obligation in the Act. Until you can show some support for that statement, Inland has no intention of negotiating 911/E911 connectivity. The concept of 911/E911 connectivity is not

an item that falls under Section 251 or Section 252 of the Act. Obtaining 911 or E911 connectivity is an obligation of each carrier that is independent from interconnection and falls on each carrier to arrange with the appropriate public authorities. If you have some basis under the Act that you believe makes this an obligation for an interconnection arrangement, please bring that forward and Inland will evaluate it. Absent such support, that item will not be subject to discussion.

Inland's point of contact for discussions concerning the items that you have requested in your May 5, 2008, letter, of course excluding 911/E911 connectivity, is our attorney, Mr. Richard A. Finnigan. We have looked at our schedules and the earliest we could have an initial discussion is the week of June 2, 2008, due to vacation schedules and industry meetings in the intervening weeks. Please have the appropriate representative from ICS contact Mr. Finnigan to arrange a day and time to have our initial discussion.

Sincerely,



Gregory A. Maras
Secretary

Cc: Richard A. Finnigan
Gregory J. Kopta

EXHIBIT 2

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of Intelligent Community Services, Inc. For Designation as Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2)	Docket No. UT-053041 ICS SUPPLEMENTAL COMPELLED RESPONSES TO WITA'S FIRST SET OF DATA REQUESTS
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Intelligent Community Services, Inc. ("ICS") provides the following supplemental compelled responses to Washington Independent Telecommunications Association's ("WITA's") First Set of Data Requests.

I.

GENERAL OBJECTIONS

ICS objects to WITA's definitions and instructions to the extent that they seek to impose obligations exceeding those imposed by the Commission's Rules and Washington Rules of Civil Procedure. More specifically, ICS further objects to the definitions of "ICS" and "Suncadia" as overly broad and to the instruction to provide any information beyond the scope of this docket and not within ICS's possession, custody and control. ICS hereby incorporates these general objections into each of the specific supplemental responses provided below.

II.

SPECIFIC SUPPLEMENTAL COMPELLED RESPONSES

**WUTC Docket No. UT-053041
ICS Supplemental Compelled Responses to WITA First Data Requests
July 14, 2008**

Data Request No. 1:

Is Suncadia willing to offer to Inland the contract that it has entered into with ICS simply substituting "Inland" for "ICS" and providing a more current date for the agreement? If no, please identify in detail all reasons why this is not an offer that Suncadia would make to Inland.

Response:

ICS objects to this request on the grounds that it requests speculation, rather than information, and improperly attempts to conduct contract negotiations through discovery. Subject to, and without waiver of, these objections, Suncadia is not making an offer to any carrier, but as Mr. Eisenberg states in his testimony, Suncadia is willing to enter into negotiations with any carrier that is genuinely interested in providing service to residents in the resort area in response to a legitimate request for such negotiations. Suncadia has received no such requests since executing its agreement with ICS.

Prepared by: Counsel (objections) and Paul Eisenberg
Date: June 10, 2008

Supplemental Compelled Response:

Suncadia is not willing to allow Inland or any other carrier to "opt in" to the agreement between Suncadia and ICS because the network Suncadia has constructed was designed for physical access by a single service provider. Suncadia has constructed a passive optical network ("PON") that consists of dark or "unlit" fiber strands. Suncadia has deployed only the fiber necessary to serve the residents and businesses in the resort area, and multiple customer locations are served by using a single strand of distribution fiber.

In the agreement between ICS and Suncadia, Suncadia owns the fiber distribution infrastructure and ICS owns the electronics and service extensions from the neighborhood vaults to the subscriber. It is not technically feasible for two different carriers to physically access the Suncadia distribution infrastructure because no more than one carrier can "light" any particular strand of dark fiber, and Suncadia has not deployed sufficient dark fiber for more than one carrier to have fiber dedicated to its use in serving customers within the resort area.

WUTC Docket No. UT-053041

ICS Supplemental Compelled Responses to WITA First Data Requests

July 14, 2008

Suncadia is not willing to expend the resources that would be required to build duplicate facilities solely to allow a second service provider to have its own fiber to use to serve customers. Suncadia, however, is willing to permit another carrier to provide service within the resort area. Suncadia originally attempted to negotiate with Inland to be the carrier that had physical access to the Suncadia network, but Inland walked away from those negotiations. Suncadia subsequently negotiated and reached an agreement with ICS.

If Inland (or any other service provider) legitimately wants to offer service to Suncadia resort residents, Inland must access those customers by obtaining a virtual path to a subscriber via the electronics and additional network infrastructure provided by ICS. ICS has offered to provide Inland with such access, and those two carriers currently are negotiating the terms and conditions of an Interconnection Agreement which include Inland's ability to provide telecommunications service in the Suncadia resort area.

Prepared by: Paul Eisenberg and Keith Southard

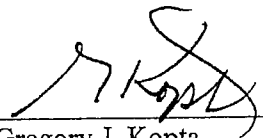
Date: July 14, 2008

Dated this 14th day of July 2008.

As to objections:

**INTELLIGENT COMMUNITY SERVICES,
INC.**

By: _____


Gregory J. Kopta

WSBA No. 20519

Davis Wright Tremaine LLP

1201 Third Avenue, Suite 2200

Seattle, WA 98101-3045

CERTIFICATE OF SERVICE
UT-053041

I certify that I have this day served the attached Response to ICS Motion to Compel WITA and Inland to Respond to Data Requests upon all parties of record in this proceeding by sending a copy by electronic mail and U.S. mail, unless otherwise specified, to the following parties or attorneys of parties:

Harold Grover
President
Intelligent Community Services, Inc.
9400 SW Beaverton
Hillsdale Hwy #205
Beaverton, OR 97005-3362
VIA U.S. MAIL ONLY

Jeff Tilleman
Vice President/General Manager
Intelligent Community Services, Inc.
1200 NW Naito Pkwy Ste 200
Portland, OR 97209
jefft@icsemail.net
VIA E-MAIL ONLY

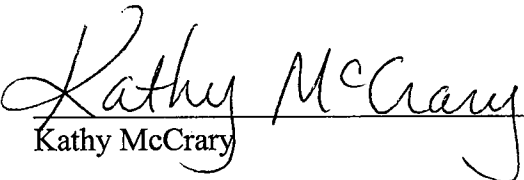
Gregory T. Kopta
Davis Wright Tremaine LLP
1201 Third Avenue Ste 2200
Seattle, WA 98101-3045
gregkopta@dwt.com

Jennifer Cameron-Rulkowski
Assistant Attorney General
Office of the Attorney General
1400 South Evergreen Park Drive SW
Olympia, WA 98504-0128
jcameron@utc.wa.gov
VIA E-MAIL AND HAND DELIVERY

I also certify that I have this day served the attached Response to ICS Motion to Compel WITA and Inland to Respond to Data Requests by e-mail and hand delivery to the following:

WUTC Records Center
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250
records@utc.wa.gov

Dated at Olympia, WA this 5th day of August, 2008.

By: 
Kathy McCrary